Office-Supreme Court, U.S.
FILED
MAR 16 1981
ALEXANDER L. STEVAS,
CLERK

NO. 80-1381
IN THE

# Supreme Court of the United States

OCTOBER TERM 1980

---

J. R. CISSNA AND EVELYN CISSNA,
His wife,
Petitioner,

v.

ROY E. AMMAN, et al.,
Respondent Class

---

IN THE MATTER OF THE PETITION OF J. R. CISSNA FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

---

## BRIEF OF RESPONDENTS AMMAN, et al. IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

---

JOSEPH C. MC KINNON
1400 NORTON BUILDING
801 - SECOND AVENUE
SEATTLE, WA 98101
Telephone (206) 624-0900

Attorney for Respondents
Roy E. Amman, et al.

## LIST OF PARTIES

The list of parties set out in the petition for a writ of certiorari is not correct. The corporations, the bankruptcy trustee and the state officer shown as defendants have all been dismissed from the action. The correct list of parties is lengthy. It is attached as an appendix to this brief.

## TABLE OF CONTENTS

STATEMENT OF THE CASE.....1

ARGUMENT IN OPPOSITION TO GRANTING OF THE WRIT.....3

The Petition Was Filed Too Late.....3

There Is No Good Reason For Review.....4

Collateral Estoppel Bars Review.....4

CONCLUSION.....5

## TABLE OF AUTHORITIES

Owners v. McQuaid, 513 F. 2d 558 (9 Cir 1975 ).....3

Parklane Hosiery Company, Inc. v. Shore, 349 U.S. 322, 59 L. Ed. 2d 552, 99 S. Ct. 645 ( 1979 ).....5

S.E.C. v. Federal Shopping Way, Inc. and J. R. Cissna, 433 F. 2d 148 ( 9 Cir 1970 ).....3,

COURT RULE

United States Supreme Court Rule 17.....4

NO. 80 - 1381

IN THE

# Supreme Court of the United States

October Term 1981

---

J. R. CISSNA and EVELYN CISSNA,
his wife,
Petitioner,

v.

ROY E. AMMAN, et al.,
Respondent Class

---

## STATEMENT OF THE CASE

The statement of the case in the petition is an argument of disputed facts rather than the objective statement required by Supreme Court Rule 21.1 (g).

It is respondents' position that the petition should be denied even if its statement of the case were accurate. Respondents therefore will not extend this brief with an accurate summary of the several thousand pages of record, that are amplified by thousands of pages of trial transcript and trial exhibits. However, some major errors in the petit-

ion's statement of the case should be corrected.

All of petitioners' suggested issues were included in the pre trial order. It is to be noted that their criticism of the instructions and interrogatories to the jury do not include any claim that any proper objections to them were overruled. Petitioners instead object to the trial court's refusal to submit further interrogatories to the jury after it had returned a verdict in accord with the instructions it had received. There is no judgement against the seller of the units. That was Federal Shopping Way, Inc. It was dismissed from the action long before the trial, because it is in bankruptcy.

The statement at page 15 of the petition that S.E.C. v. Federal Shopping Way, Inc. and J.R. Cissna, 433 F. 2d 148( 9 Cir. 1970 ) was reversed by

Owners v. McQuaid, 513 F. 2d 558 ( 9 Cir 1975 ) is not correct. The two cases are not connected although both involve sale of similar kinds of undivided interest units of real estate ownership. It is to be noted that the latter case recognized that such units are securities. The court referred to them as investment contracts.

ARGUMENT IN OPPOSITION TO GRANTING OF THE WRIT

The Petition Was Filed Too Late

The Court of Appeals denied rehearing on November 7, 1980. The ninety day limit for the petition expired on February 5, 1981. The affidavit of service of the petiition was sworn to by Barry J. Reischling, an official of the company that printed the petition. The affidavit shows that he mailed the original petition and forty copies of it to the Court on February 6, 1981.

There Is No Good Reason For Review

Respondents dispute the accuracy of the statement of the case in the petition. Yet, if the statements were entirely correct and in proper context, they would not justify review by this Court. Petitioners made no real attempt to show any of the kind of reasons for granting of the writ which are specified in this Court's Rule 17. Petitioners instead seek to persuade this Court to review factual issues.

Collateral Estoppel Bars Review

Even if this Court had time to review factual determinations made in the lower Courts upon conflicting evidence, there would be no basis for such review in this case. Petitioners are foreclosed from disputing the result below by the doctrine of collateral estoppel.

In S.E.C. v. Federal Shopping Way, Inc. and J. R. Cissna, supra, ( 433 F. 2d 148 ) the Court of Appeals found itself in "total agreement" with the decision of the trial court that J. R. Cissna had "engaged in a course of conduct in the offer and sale of securities in the form of Recre-Plex units which has constituted a gross fraud and deceit upon investors."

That offer and sale of those units is the reason for the judgement against petitioners that they ask this court to review. That may not be done. They are bound by the determination of the S.E.C. injunction suit. See: Parklane Hosiery Company, Inc. v. Shore, 349 U.S. 322, 59 L. Ed. 2d 552, 99 S. Ct. 645 ( 1979).

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted

Joseph C. McKinnon
Attorney for respondents
Roy E. Amman et al.

ROY E. AMMAN, ORAL M. AMMAN, GEORGE P. ANGELEL, ELINOR ANGELEL, WAYNE O. CLARK, CARROLL M. CLARK, JULIUS A. GRATZER, LURA GRATZER,ALBERT M. HOOVER, PEARL M. HOOVER, WINTON M. SLEIPNESS, HELEN L. SLEIPNESS, EVELYN N. SMITH, EARNEST A.HUNGERBUHLER, WILLIAM P. TOPEL, DOROTHY J. TOPEL,EMIL BISIG, ROSE L. BISIG, JOSEPH W. GRUBER, ELIZABETH FERN GRUBER, MERELE E. BUNDROCK, MARIAN F. BUNDROCK, CHARLES J. ESPOSITO, RUBY A. ESPOSITO, ARTHUR F. RUNYAN, CLARA I. RUNYAN, JOHN ANDERSON, KATHLEEN A. ANDERSON, ARNOLD D. DAVIS, ELIZABETH DAVIS, MYRTLE E. PORTH, RAYMOND H. HUNT, HILDA MAY HUNT, JOHN M. HOWARD, MARGARET H. HOWARD, GLADYS L. VARY, DELMA K. RUSSEL, C. OCKERSTROM, HELEN OCKERSTROM, LYLE C. BOYD, LOIS BOYD, TEICO INC., FLOYD KEITER, MARTY D. KEITER, FERN C. MASTERS, BERT SIBON, BERTHA SIBON, JARVIS W. HAUGEN, CAROL F. HAUGEN, ETHEL B. KASSON, VIRGINIA M. JENSEN, EDWARD J. JANIKOWSKI and GENEVIEVE H. JANIKOWSKI are the Plaintiffs in the trial court and they presumably are the persons which the petition for a writ of certiorari seeks to name when it specifies ROY E. AMMAN, et al. Those named plaintiffs represent

a class of over two thousand persons.

Many of the defendants named in the complaint have been dismissed from the action. The defendants who have not been dismissed are listed below. Defendant wives are shown here as "et ux." They are each named in the complaint as "Jane Doe (husband's surname), his wife".

JOHN R. CISSNA et ux.
CHARLES H. ANDERSON et ux.
CLINTON ERICKSON et ux.
FRED W. GEMMER et ux.
RICHARD GRONNING et ux.
VERNON HILL et ux.
JERRY R. MAJORS et ux.
EVERETT MARTIN et ux.
LOUIS MAZZA et ux.
WAYNE G. MOSBY et ux.
RAY M O'DAY et ux.
ROBERT M. PAVOLKA et ux.
RAYMOND PHILLIPS et ux.
M. A. WUTZ et ux.
FRANCIS H. CHAPIN et ux.